

5-19-03 P 12)



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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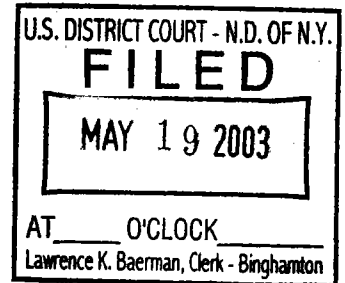
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Writer Direct: (518) 486-9717

May 14, 2003

Honorable Thomas J. McAvoy
United States District Judge
United States District Court
Northern District of New York
Federal Building and U.S. Courthouse
15 Henry Street
Binghamton, New York 13901



Re: *College Standard Magazine, et al. v SUNY at Albany, et al.*
Northern District of New York
J. 03-CV-505 (T.M.)

Dear Judge McAvoy:

I am writing to request permission to file a cross-motion pursuant to Federal Rule 12(b)(1) on behalf of the state defendant in the above-referenced matter, the State University of New York at Albany, in response to plaintiffs' motion for a preliminary injunction, which I have been advised is now returnable on June 9, 2003. I make this request because Local Rule 7.1(c)(2) provides in relevant part that "a dispositive motion which would be filed under 7.1(b)(1) must not be filed as a cross-motion to a motion filed under 7.1(b)(2)."

The state defendant intends to assert Eleventh Amendment immunity as a defense to both the motion for the preliminary injunction and the underlying complaint. Because plaintiffs' reply, if any, to this defense would presumably be the same regardless of when it is asserted, I respectfully submit that there would be no prejudice to the plaintiffs if the state defendant were permitted to file a dispositive cross-motion to plaintiffs' non-dispositive motion. Moreover, I believe permitting the state defendant to so cross-move promotes judicial economy.

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Thank you for your consideration of this matter.

Respectfully yours,

Nancy G. Groenwegen

Nancy G. Groenwegen
Assistant Attorney General
Bar Roll No. 101790

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Delmar, New York 12054

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Albany, New York 12202

REQUEST TO FILE A CROSS MOTION
ON BEHALF OF THE STATE UNIVERSITY OF NY is

~~MOTION DENIED~~

Dated at Binghamton, NY

5-19-03

IT IS SO ORDERED

Thomas J. McAvoy
Thomas J. McAvoy
District Court Judge

BASED ON THE FACT THAT PLAINTIFF HAS FILED
A NOTICE OF DISMISSAL ON 5-19-03 AS TO THE
STATE UNIVERSITY OF NEW YORK AT ALBANY